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of all the surrounding circumstances, that fuel oil, if discharged into the waters of the bay, with its tides and winds, would probably be set on fire, by the accidental or negligent burning of the wharf, or by live coals thrown into the bay and coming in contact with the oil." *Stone v. B. & A. R. Co.*, supra.

S. R. W.

POLICE REGULATION OF THE BUSINESS OF PLUMBING.—The constitutionality of a statute requiring plumbers to pass an examination before entering into that business has not been before the courts of this country many times. There has, however, been legislation on the subject in a number of the states, which has taken two forms; first, examination of the individual intending to carry on that occupation, thereby qualifying him to use his own discretion in the work; second, compelling anyone intending to do any plumbing work, to submit plans of the same to a board of plumbing inspectors, which shall examine and approve of them before the work can be done. A law of the latter sort was passed by the legislature of Iowa in 1907 and by that of New Jersey in 1888, neither having been seriously questioned as to constitutionality up to the present time. In a recent New Jersey case the court peremptorily dismissed the objection that such a law violated the rights of individuals in carrying on their business, saying simply that it was "manifestly without legal footing." *Board of Health of Asbury Park v. Hayes* (Oct. 1909), — N. J. —, 74 Atl. 339. The validity of the Iowa law was not questioned in a late case. *City of Des Moines v. Cutler* (Nov. 1909), — Ia. —, 123 N. W. 218. Regulations of this sort, viz., statutes providing that the *work itself* must be inspected and passed upon by inspectors appointed by law seem not to have been held invalid by any of the courts, but as to the validity of a law which provides that no *person* shall work at the business of plumbing, either as master plumber or journeyman plumber, until an examination by a board of examiners has been passed, the courts are not in accord. The objections advanced to such a law are principally that it contravenes the 14th amendment of the constitution and the right to engage in whatever occupation one desires, which latter was formulated as an inalienable right under the phrase "pursuit of happiness" in the Declaration of Independence. The principal question is whether the business of plumbing is so related to the health and welfare of the people that its regulation reasonably tends to protect the same. In *People ex rel. Nechamcus v. Warden*, 144 N. Y. 529, 39 N. E. 686, 27 L. R. A. 718, a bare majority of the court of appeals upheld the validity of the plumbing act of that state. Judge PECKHAM's dissenting opinion has formed the foundation of many decisions which have since been rendered against the validity of such a law. A case arose in Washington recently in which the court reviewed nearly all the cases which have been decided on the point, and held that such a regulation was not constitutional, concurring in this opinion of Mr. Justice PECKHAM. *Richey v. Smith*, 42 Wash. 237, 84 Pac. 851, 5 L. R. A. (N. S.) 674. He said: "There must be more than the mere fact of the possible existence of some small amount of unhealthiness to warrant legislative interference with liberty. It is unfortunately true that labor, even in any department, may possibly carry with it the seeds of unhealthiness.

But are we all on that account, at the mercy of legislative majorities? A printer, a tinsmith, * * * a cabinet-maker, a drygoods clerk, a bank's, a lawyer's or a physician's clerk, or a clerk in almost any kind of business, would all come under the power of the legislature, on the assumption. No trade, no occupation, no mode of one's living, could escape this all pervading power * * ." "The trade of the practical plumber is not one of the learned professions nor does such a tradesman hold himself out in any manner as an expert in the science of sanitation, nor is any such knowledge expected of him." Two recent cases referring to this reasoning are, *Wilby v. State*, (1908), 93 Miss. 767, 47 South. 465, and *Kerr v. Ross*, 5 App. D. C. 241.

The weight of authority, however, seems to be the other way and holds such legislation proper police regulation. The courts of Maryland, Ohio, Georgia, Texas, Wisconsin, Illinois, Minnesota, Pennsylvania, New York and California have considered such legislation favorably. *State v. Gardner*, 58 Ohio St. 599; *Felton v. City of Atlanta*, 4 Ga. App. 183, 61 S. E. 27; *Robinson v. City of Galveston*,—Tex. Civ. App.—, 111 S. W. 1076; *State ex rel. Winkley v. Benzenberg*, 101 Wis. 172, 76 N. W. 345; *Douglas v. People*, 225 Ill. 536, 80 N. E. 341; *State ex rel. Chapel v. Justus*, 90 Minn. 474, 97 N. W. 124; *Beltz v. Pittsburgh*, 26 Pa. Super Ct. 66; *People ex rel. Necham-cus v. Warden*, supra; *Singer v. State*, 72 Md. 464; *Ex parte Grey*,—Cal. App.—(1909), 104 Pac. 476. The argument of these courts is, that while the plumbing business is not one of the learned professions and much of it is mechanical work, yet a certain degree of training is absolutely necessary in order to properly qualify one to install pipes, tanks, fittings, traps, etc., for the conveyance of gas, waters and sewage which are destructive to health and life. It is insisted that regulations of this sort do tend to accomplish the protection aimed at, which justifies the method, although it may not fully accomplish the result. It is interesting to note the steady increase of regulation applied to the different occupations under the exercise of the police power. The question is where is the line to be drawn. The court in the Washington case above referred to, said, "We cannot close our eyes to the fact that legislation of this kind is on the increase. Like begets like and every legislative session brings forth some new act in the interest of some new trade or occupation. The doctor, the lawyer, the druggist, the dentist, the barber, the horse-shoer and the plumber have already received favorable consideration at the hands of our legislature and the end is not yet, for the nurse and the undertaker are knocking at the door."

K. B. G.